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16 **UNITED STATES BANKRUPTCY COURT**  
17 **NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

18 **In re:**

19 **PG&E CORPORATION,**

20 **- and -**

21 **PACIFIC GAS AND ELECTRIC**  
22 **COMPANY,**

- 23 ☐ Affects PG&E Corporation  
24 ☒ Affects Pacific Gas and Electric  
Company  
25 ☐ Affects both Debtors

26 *\* All papers shall be filed in the Lead  
Case, No. 19-30088 (DM).*

Bankruptcy Case No. 19-30088 (DM)  
Chapter 11 (Lead Case) (Jointly Administered)

**DEBTORS' MOTION PURSUANT TO 11 U.S.C.  
§ 105(a) AND FED. R. BANKR. P. 9019 FOR AN  
ORDER (I) APPROVING SETTLEMENT  
AGREEMENT RESOLVING EX PARTE OII  
AND (II) GRANTING RELATED RELIEF  
("EX PARTE OII SETTLEMENT MOTION")**

Date: April 29, 2020  
Time: 10:00 am (Pacific Time)  
Place: United States Bankruptcy Court  
Courtroom 17, 16th Floor  
San Francisco, CA 94102  
Judge: Hon. Dennis Montali  
**Objection Deadline: April 22, 2020, 4:00 pm (PT)**

1 PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and Electric Company  
2 (the “**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the “**Debtors**”) in the  
3 above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), hereby submit this Motion  
4 (the “**Motion**”), pursuant to section 105(a) of title 11 of the United States Code (the “**Bankruptcy**  
5 **Code**”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for  
6 an order (i) approving the settlement agreement, dated June 28, 2019 (the “**Phase II Settlement**  
7 **Agreement**”), by and among the Utility, the City of San Bruno, the City of San Carlos, the Public  
8 Advocates Office, the Safety and Enforcement Division (“**SED**”) of the California Public Utilities  
9 Commission (“**CPUC**”), and The Utility Reform Network (“**TURN**” and, collectively, the “**Parties**”)  
10 resolving Phase II of the Ex Parte OII (as defined below), and (iii) granting related relief. The Phase II  
11 Settlement Agreement was submitted to the CPUC for approval on June 28, 2019 and was subsequently  
12 approved by the CPUC in Decision 19-12-013, dated December 5, 2019 (the “**CPUC Order**”).

13 In support of the Motion, the Debtors submit the Declaration of Steven Frank  
14 (the “**Frank Declaration**”), filed contemporaneously herewith. A true and correct copy of the CPUC  
15 Order, along with a copy of the Phase II Settlement Agreement, is annexed to the Frank Declaration as  
16 **Annex 1.**

17 A proposed form of order granting the relief requested herein is annexed hereto as  
18 **Exhibit A** (the “**Proposed Order**”).  
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION**

3 The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334,  
4 the *Order Referring Bankruptcy Cases and Proceedings to Bankruptcy Judges*, General Order 24 (N.D.  
5 Cal. Feb. 22, 2016), and Rule 5011-1(a) of the Bankruptcy Local Rules. This is a core proceeding  
6 pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and  
7 1409.

8 **II. BACKGROUND**

9 On January 29, 2019 (the “**Petition Date**”), the Debtors commenced with the Court  
10 voluntary cases under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their  
11 businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108  
12 of the Bankruptcy Code. No chapter 11 trustee or examiner has been appointed in either of the Chapter  
13 11 Cases. The Debtors’ Chapter 11 Cases are being jointly administered for procedural purposes only  
14 pursuant to Bankruptcy Rule 1015(b).

15 On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an  
16 Official Committee of Unsecured Creditors (the “**Creditors Committee**”). On February 15, 2019, the  
17 U.S. Trustee appointed an Official Committee of Tort Claimants (the “**Tort Claimants Committee**”  
18 and, together with the Creditors Committee, the “**Committees**”).

19 Additional information regarding the circumstances leading to the commencement of the  
20 Chapter 11 Cases and information regarding the Debtors’ businesses and capital structure is set forth in  
21 the *Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief* [Docket  
22 No. 263] (the “**Wells Declaration**”).

23 **III. EX PARTE OII PROCEEDING AND ITS RESOLUTION**

24 On November 23, 2015, the CPUC issued an Order Instituting Investigation 15-11-015,  
25 commencing a proceeding to determine whether the Utility should be sanctioned for violations of Article  
26 8 of the CPUC’s Rules of Practice and Procedure (C.C.R. Title 20, Div. 1, Ch.1, Sections 8.1 *et seq.*),  
27 Rule 1.1 of the Rules of Practice and Procedure, and Public Utilities Code (Pub. Util. Code) §§ 1701.2(c)  
28 and 1701.3(c) (collectively, the “**Ex Parte Rules**”) governing ex parte communications between the

1 Utility and CPUC officials, including Administrative Law Judges, Commissioners, and Commissioners'  
2 advisors (the “**Ex Parte OII**”). The Ex Parte OII focused on communications reflected in emails sent  
3 or received by Utility officers and employees.

4 Resolution of the Ex Parte OII occurred in two phases. Phase I of the Ex Parte OII  
5 (“**Phase I**”) related to emails disclosed by the Utility in 2014 and 2015 and allegations of ex parte  
6 violations levied by the City of San Bruno in 2014. In March of 2017, the Parties submitted a settlement  
7 of Phase I (the “**Phase I Settlement Agreement**”), which proposed, among other things:

8 (a) A total financial remedy of \$86.5 million, allocated among:

- 9 (i) \$1 million paid by the Utility to the State of California’s General Fund  
10 (the “**California General Fund**”);  
11 (ii) A \$63.5 million credit to ratepayers in the Utility’s 2015 Gas Transmission  
12 and Storage rate case;  
13 (iii) A \$10 million credit to ratepayers in the Utility’s 2020 General Rate Case;  
14 and  
15 (iv) \$6 million in compensatory payments each to the City of San Bruno and the  
16 City of San Carlos; and

17 (b) Non-financial remedies in which the Utility agreed to:

- 18 (i) Provide notice to the Public Advocates Office, SED, and TURN (collectively,  
19 the “**Notice Parties**”) of any tours of the Utility’s facilities by a CPUC  
20 decisionmaker, from 2018- 2020;  
21 (ii) Provide notice to the Notice Parties any time the Utility sends a CPUC  
22 decisionmaker any credit rating agency or investor report or analysis, for a  
23 period of three years;  
24 (iii) Provide notice to the Notice Parties any time certain Utility officers attend  
25 certain planned meetings with a CPUC or Commissioner’s advisor, for a  
26 period of two years; and  
27 (iv) Provide training to the Utility’s Regulatory Affairs employees and Law  
28 Department attorneys on the CPUC’s ex parte rules, for a period of three  
years.

29 On September 1, 2017, the Administrative Law Judge (“**ALJ**”) assigned to oversee the  
30 Phase I proceeding issued a proposed decision (the “**Proposed Decision**”) that modified the financial  
31 remedy contemplated by the Parties, increasing the amount to be paid to the California General Fund  
32 from \$1 million to \$12 million, resulting in a total financial remedy to be paid by the Utility for Phase I  
33 of \$97.5 million.

34 On September 21, 2017, the Utility filed a motion agreeing to the ALJ’s proposed

1 modifications in the Proposed Decision. Along with the motion, the Utility disclosed 16 additional  
2 emails from 2013 – 2014 (the “**September 2017 Disclosure**”) that the Utility discovered while  
3 responding to an unrelated governmental inquiry that raised similar issues as the communications that  
4 were encompassed in the Phase I Settlement Agreement. Following several discussions, on November  
5 1, 2017, the Parties, other than the Utility, submitted a joint filing accepting the Proposed Decision and  
6 requesting that the CPUC open a second phase (“**Phase II**”) of the Ex Parte OII to address the emails  
7 included in the Utility’s September 2017 Disclosure. On May 3, 2018, the CPUC approved the Proposed  
8 Decision adopting the modified Phase I Settlement Agreement and commencing Phase II of the Ex Parte  
9 OII.

10 Following an initial meet and confer and discovery period, the CPUC held a prehearing  
11 conference on Phase II of the Ex Parte OII on March 9, 2019. During the latter half of 2018 and the first  
12 half of 2019 the Parties engaged in settlement discussions, which culminated in the Phase II Settlement  
13 Agreement, which resolves all remaining issues in the proceeding. The Parties filed a joint motion  
14 seeking CPUC approval of the Phase II Settlement Agreement on June 28, 2019, which was  
15 subsequently approved by the CPUC Order dated December 5, 2019.

#### 16 **IV. MATERIAL TERMS OF THE PHASE II SETTLEMENT AGREEMENT**

17 The Phase II Settlement Agreement fully resolves Phase II of the Ex Parte OII and any  
18 disputed claims, allegations or outstanding issues related thereto. The key terms and provisions of the  
19 Phase II Settlement Agreement, as approved by the CPUC Order, are summarized below.<sup>1</sup>

##### 20 **A. Financial Remedies**

21 Pursuant to the Phase II Settlement Agreement, the Utility will pay financial remedies  
22 totaling \$10 million (the “**Financial Remedies**”), none of which shall be borne by ratepayers. The  
23 Financial Remedies consist of the following: (i) \$2 million to be contributed by the Utility to the  
24 California General Fund (the “**General Fund Claim**”) pursuant to Section 2100 *et seq.* of the Public  
25 Utilities Code; (ii) the Utility forgoing a collection of \$5 million in revenue requirements during the  
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27 <sup>1</sup> This summary is qualified in its entirety by reference to the provisions of the CPUC Order and of the  
28 Phase II Settlement Agreement. To the extent that any discrepancies exist between the summary  
described in this Motion and the terms of the CPUC Order and Phase II Settlement Agreement, the  
CPUC Order and Phase II Settlement Agreement shall govern.

1 term of its 2019 Gas Transmission and Storage rate case (the “ **Gas Transmission and Storage**  
2 **Ratemaking Remedy**”); (iii) the Utility foregoing a collection of \$1 million in revenue requirements  
3 during the term of its 2020 General Rate Case (the “**General Rate Case Ratemaking Remedy**” and,  
4 together with the Gas Transmission and Storage Ratemaking Remedy, the “**Ratemaking Remedies**”);  
5 (iv) \$1 million to be contributed by the Utility to the City of San Bruno General Fund (the “**San Bruno**  
6 **Fund Claim**”); and (v) \$1 million to be contributed by the Utility to the City of San Carlos General  
7 Fund (the “**San Carlos Fund Claim**” and together with the General Fund Claim and San Bruno Fund  
8 Claim, the “**Financial Claims**”).

9 **B. Non-Financial Remedies**

10 In addition to the non-financial remedies agreed to in Phase 1, the Utility agreed to  
11 additional non-financial remedies that are tailored to the issues raised in Phase II of the Ex Parte OII  
12 (collectively, the “**Non-Financial Remedies**”). The Non-Financial Remedies consist of the following:

- 13 (a) Through December 31, 2025, if the Utility gives a tour of its facilities to a CPUC  
14 decisionmaker it will provide notice within three days of the tour in an open General  
15 Rate Case, Gas Transmission and Storage rate case, or other relevant cost recovery  
16 case if the facility, technology, process, or information to be addressed during the  
17 tour is at issue in such a case, and will additionally invite a representative of each of  
18 the Public Advocates Office, the SED, and TURN to attend the tour. This is intended  
19 as an extension of the remedy agreed to by the Utility in the settlement of Phase I;
- 20 (b) Through December 31, 2025, if the Utility transmits via email a credit rating agency  
21 or investor report or analysis to a CPUC decisionmaker, the Utility simultaneously  
22 will provide a copy to designated representatives of the Public Advocates Office, the  
23 SED, TURN, and all parties in the Utility’s most recent cost of capital, General Rate  
24 Case, and Gas Transmission and Storage proceedings. This is intended as an  
25 extension of the remedy agreed to by the Utility in the settlement of Phase I;
- 26 (c) Through December 31, 2025, if the Corporation’s Chief Executive Officer, the  
27 Utility’s President, the Corporation’s Chief Financial Officer, or the Corporation’s  
28 General Counsel, participates in a meeting arranged or accepted by the Utility to be  
attended only by the Utility and its agents and the CPUC Commissioner and/or the  
Commissioner’s advisors, the Utility will provide notice within three days to  
designated representatives of the Public Advocates Office and of TURN. This is  
intended as an extension of the remedy agreed to by the Utility in the settlement of  
Phase I;
- (d) The Utility will provide training on the CPUC’s ex parte communication rules, and  
through December 31, 2025, the Utility will provide to the other Parties to the Phase  
II Settlement Agreement (i) a copy of the training materials used for this purpose,  
and (ii) an annual certificate of completion for the training of all officers, Regulatory  
Affairs (or its successor) employees and Law Department attorneys. This is intended  
as an extension of the remedy agreed to by the Utility in the settlement of Phase I;



- (e) The Utility will not contract with outside parties for “Advocacy Work” before the CPUC through December 31, 2025. “Advocacy Work” means lobbying on behalf of the Utility directly before the CPUC, other than in a public hearing, workshop, or other public forum, which has been noticed to the official service list or on the record of a CPUC proceeding. Advocacy Work does not include (i) testimony or participation in a public hearing, workshop, or other public forum, which has been noticed to the official service list or on the record of a CPUC proceeding, (ii) the provision of technical, advisory, or expert services to support the Utility’s advocacy before the CPUC, where the primary purpose of such services is the technical, advisory, or expert services, and not lobbying, or (iii) lobbying work before any governmental body other than the CPUC;
- (f) Commencing in January 1, 2026 and continuing through December 31, 2030, the Utility shall include in all contracts with outside parties for “Advocacy Work,” as defined above, before the CPUC a summary of the CPUC’s ex parte communication rules, as then in effect, and contractually obligate the outside parties to adhere to these rules. The Utility shall provide the summary of the ex parte rules it intends to include in such contracts to the Public Advocates Office, the SED, and TURN before January 1, 2026; and
- (g) The Utility will not oppose a request by any of the Parties for a rulemaking to consider a change to the CPUC’s rules that would extend the ex parte rules set forth in Article 8 of the CPUC’s Rules of Practice and Procedure to cover, as a “ratesetting proceeding,” the advice letter process for those instances where the process could result in a CPUC resolution.

**C. Bankruptcy Court Approval and Timing of Payments**

Pursuant to the CPUC Order, the Utility is required to seek Bankruptcy Court approval of the Phase II Settlement Agreement. *See* CPUC Order at 26, ¶2.

With respect to the Financial Claims, the Debtors have agreed with the Parties that the Utility will satisfy such claims in accordance with the terms of a Bankruptcy Court order authorizing payment of the Financial Claims, in full or in part, pursuant to the terms of a confirmed chapter 11 plan of reorganization. *See* Phase II Settlement Agreement ¶3.8 (“Except as may be otherwise instructed by the [CPUC] and ordered by the Bankruptcy Court, PG&E shall satisfy the financial remedies set forth in [the Phase II Settlement Agreement], and shall treat and satisfy the claims relating to such remedies as general unsecured claims in accordance with the terms of a confirmed chapter 11 plan of reorganization.”). This authority would be in the form of an order of the Bankruptcy Court approving a chapter 11 plan of reorganization that provides for the payment of general unsecured claims, including the general unsecured claims relating to the Financial Claims. The Phase II Settlement Agreement further provides that, if neither the confirmed chapter 11 plan of reorganization nor the CPUC specifies

1 a time by which PG&E shall satisfy the Financial Claims, payments to the City of San Bruno, the City  
2 of San Carlos, and the California General Fund shall be received no later than any confirmed chapter 11  
3 plan of reorganization's effective date, or, if not reasonably practicable, no later than thirty (30) days  
4 after such effective date. *See* Phase II Settlement Agreement, § 3.8.<sup>2</sup> Section 3.8 of the Phase II  
5 Settlement Agreement also provides that, absent instruction by the CPUC or Bankruptcy Court  
6 otherwise, satisfaction of the Ratemaking Remedies shall occur no later than the first reasonable  
7 opportunity to do so following the effective date of any confirmed plan.

8 Further, the Phase II Settlement Agreement provides that within ten (10) days of the  
9 effective date of any confirmed plan, the Utility shall file a report in the Ex Parte OII proceeding that  
10 explains the treatment of the Financial Remedies under the plan and indicates when and how the Utility  
11 will satisfy the Financial Remedies. *See* Phase II Settlement Agreement, § 3.8. As currently proposed,  
12 under the *Debtors' and Shareholder Proponents' Joint Chapter 11 Plan of Reorganization Dated March*  
13 *16, 2020* (as it may be amended, modified or supplemented, the "**Plan**"), allowed general unsecured  
14 claims, such as the claims contemplated to be allowed herein and in the Phase II Settlement Agreement,  
15 will be paid by the Debtors in full and in cash on the effective date of the Plan, or as soon as reasonably  
16 practicable thereafter. *See* Plan, Article IV.

## 17 **V. BASIS FOR RELIEF REQUESTED**

### 18 **A. The Phase II Settlement Agreement is in the Best Interests of the Debtors' Estates** 19 **and Should be Approved Pursuant to Bankruptcy Rule 9019.**

20 The Debtors submit that the Phase II Settlement Agreement is in the best interests of the  
21 Debtors' estates and all stakeholders and should be approved under Bankruptcy Rule 9019. Bankruptcy  
22 Rule 9019(a) provides "[o]n motion by the trustee and after notice and a hearing, the court may approve  
23 a compromise and settlement." Fed. R. Bankr. R. 9019(a). This rule empowers Bankruptcy Courts to  
24 approve settlements "if they are in the best interests of the estate." *In re Drexel Burnham Lambert*  
25 *Group, Inc.*, 134 B.R. 499, 505 (Bankr. S.D.N.Y. 1991); *see also Myers v. Martin (In re Martin)*, 91

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26 <sup>2</sup> The CPUC Order both approves the Phase II Settlement Agreement and orders PG&E to make payment  
27 to the State General Fund within 30 days of the Court's approval of this Motion, thus creating some  
28 ambiguity regarding timing of the satisfaction of the General Fund Claim. The Debtors submit that the  
CPUC Order should be interpreted to support the Parties' intention to satisfy the General Fund Claim  
within 30 days after a confirmed chapter 11 plan of reorganization becoming effective, as the settling  
parties intended for all of the Financial Claims, not within 30 days of the Court's approval of this Motion.



1 F.3d 389, 393 (3d Cir. 1996). Compromises and settlements are normal and welcomed occurrences in  
2 chapter 11 because they allow a debtor and its creditors to avoid the financial and other burdens  
3 associated with litigation over contentious issues and expedite the administration of the bankruptcy  
4 estate. *See Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S.  
5 414, 424 (1968) (hereafter, “*TMT Trailer Ferry*”); *Martin v. Kane (In re A&C Properties)*, 784 F.2d  
6 1377, 1380-81 (9th Cir. 1986). The decision to approve a particular compromise lies within the sound  
7 discretion of the Court. *See Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994); *Woodson v.*  
8 *Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988). A proposed compromise  
9 and settlement implicates the issue of whether it is “fair and equitable” and “in the best interest of the  
10 [debtor’s] estate.” *In re A&C Properties*, 784 F.2d at 1381. The court must apprise itself “of all relevant  
11 facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should  
12 the claim be litigated.” *TMT Trailer Ferry*, 390 U.S. at 424.

13 Courts in this jurisdiction typically consider the following factors in determining whether  
14 a settlement should be approved: (i) the probability of success in litigation, with due consideration for  
15 the uncertainty in fact and law; (ii) the difficulties, if any, to be encountered in the matter of collecting  
16 any litigated judgment; (iii) the complexity and likely duration of the litigation and any attendant  
17 expense, inconvenience, and delay; and (iv) the paramount interest of the creditors and the proper  
18 deference to their reasonable views in the premises. *See In re Woodson*, 839 F.2d at 620 (quoting *A&C*  
19 *Props.*, 784 F.2d at 1380). It is not necessary that the conclusions reached in the consideration of each  
20 of the above factors support the settlement, but taken as a whole, those conclusions must favor the  
21 approval of the settlement. *See In re Pacific Gas and Elec. Co.*, 304 B.R. 395, 417 (Bankr. N.D. Cal.  
22 2004) (citing *In re WCI Cable, Inc.*, 282 B.R. 457, 473-74 (Bankr. D. Or. 2002)).

23 The standard courts apply for approval of settlements under Bankruptcy Rule 9019 is  
24 deferential to the debtor’s judgment and merely requires the Court to ensure that the settlement does not  
25 fall below the lowest point in the range of reasonableness in terms of potential benefits to the debtor.  
26 *See Allied Waste Serves. of Mass., LLC (In re Am. Cartage, Inc.)*, 656 F.3d 82, 92 (1st Cir. 2011) (“The  
27 task of both the bankruptcy court and any reviewing court is to canvass the issues and see whether the  
28 settlement falls below the lowest point in the range of reasonableness . . . If a trustee chooses to accept

1 a less munificent sum for a good reason (say, to avoid potentially costly litigation), his judgment is  
2 entitled to some deference.”) (*citing In re Thompson*, 965 F.2d 1136, 1145 (1st Cir. 1992)); *Shugrue*,  
3 165 B.R. at 123 (a court need not be aware of or decide the particulars of each individual claim resolved  
4 by the settlement or “assess the minutia of each and every claim”; rather, a court “need only canvass the  
5 issues and see whether the settlement falls ‘below the lowest point in the range of reasonableness.’”);  
6 *see also, In re Pacific Gas and Elec. Co.*, 304 B.R. at 417; *In re Planned Protective Servs., Inc.*, 130  
7 B.R. 94, 99 n.7 (Bankr. C.D. Cal. 1991) (same).

8           While a court must “evaluate . . . all . . . factors relevant to a fair and full assessment of  
9 the wisdom of the proposed compromise,” *Anderson*, 390 U.S. at 424-25, a court need not conduct a  
10 “mini-trial” of the merits of the claims being settled, *Port O’Call Invest. Co. v. Blair (In re Blair)*, 538  
11 F.2d 849, 851 (9th Cir. 1976), or conduct a full independent investigation. *Drexel Burnham Lambert*  
12 *Group*, 134 B.R. at 496. As one court explained in assessing a global settlement of claims, “[t]he  
13 appropriate inquiry is whether the Settlement Agreement *in its entirety* is appropriate for the . . . estate.”  
14 *Air Line Pilots Ass’n, Int’l v. Am. Nat’l Bank & Trust Co. (In re Ionosphere Clubs, Inc.)*, 156 B.R. 414,  
15 430 (S.D.N.Y. 1993), *aff’d* 17 F.3d 600 (2d Cir. 1993) (emphasis added).

16           Here, the terms of the Phase II Settlement Agreement are fair and reasonable and in the  
17 best interest of the Utility, its estate, creditors and other stakeholders, and should be approved. The  
18 Phase II Settlement Agreement is the result of extensive, good faith, and informed negotiations among  
19 parties with a thorough understanding of the underlying issues, and all parties supported or did not  
20 oppose the Phase II Settlement Agreement. The agreement fully resolves Phase II of the Ex Parte OII,  
21 eliminates the costs and uncertainties associated with further litigation, including the possible costs of  
22 rehearing, appeal, and additional penalties, and ultimately benefits the Utility’s customers through the  
23 Ratemaking Remedies therein.

24           Following months of arms’-length negotiations with the Parties regarding Phase II of the  
25 Ex Parte OII beginning in May, 2018, the parties ultimately agreed to the terms of the Phase II Settlement  
26 Agreement. In entering into the Phase II Settlement Agreement, the Utility considered many factors,  
27 including the benefit to customers, the potential costs and risks associated with continued litigation of  
28 Phase II of the Ex Parte OII, and the potential penalties that could otherwise be levied. During this

1 process, all Parties were involved in, or had an opportunity to be involved in, the negotiations and the  
2 proceedings. Further, the Phase II Settlement Agreement clearly does not fall below the lowest point in  
3 the range of reasonableness. Indeed, the CPUC has already determined that the Phase II Settlement  
4 Agreement is “reasonable in light of the record, is consistent with law, and is in the public interest.”  
5 CPUC Order at 5.

6 As set forth above, the Phase II Settlement Agreement contemplates both Financial  
7 Remedies and Non-Financial Remedies. The agreed \$10 million in Financial Remedies (\$6 million of  
8 which are Ratemaking Remedies, rather than cash contributions), although meaningful, caps the  
9 Utility’s liability for Phase II of the Ex Parte OII and provides certainty that would not otherwise  
10 be available if the Ex Parte OII were to continue to be litigated.

11 In addition to the costs, further litigation presents the possibility that the CPUC would  
12 levy a higher penalty than what is contemplated in the Phase II Settlement Agreement. Here, the Utility  
13 has admitted that certain communications at issue in the Phase II Settlement Agreement violated the Ex  
14 Parte Rules and all the Parties agree that communications in the jointly-approved evidentiary record  
15 reflect serious misconduct, raise new issues not addressed in the Phase I Settlement Agreement, and  
16 warrant additional remedies beyond those approved in connection with resolution of Phase I. However,  
17 the Parties did not attempt to determine the specific number of violations at issue and, if the proceeding  
18 were to continue, the CPUC could determine that financial remedies in excess of the \$10 million  
19 contemplated in the Phase II Settlement Agreement are warranted.

20 Further, the Financial Remedies were highly negotiated and tailored to these specific  
21 circumstances. The Financial Remedies take into account that the Utility has already paid substantial  
22 amounts (\$97.5 million) in connection with the Phase I Settlement Agreement, which covered violations  
23 involving many of the same Utility employees and CPUC proceedings that are at issue in Phase II of the  
24 Ex Parte OII. The Non-Financial remedies are tailored to promote compliance with the Ex Parte Rules  
25 and provide greater transparency into the Utility’s communications with the CPUC, to the benefit of the  
26 Utility, its estate, and its creditors and customers. Absent the Phase II Settlement Agreement, there is  
27 no guarantee that a final CPUC determination would take into account these circumstances and provide  
28 for similarly tailored remedies.

1 By entering into the Phase II Settlement Agreement, the Utility is capping its financial  
2 liability in connection with Phase II of the Ex Parte OII at \$10 million (comprised of \$4 million in  
3 allowed general unsecured claims relating to the Financial Claims and forgoing \$6 million in  
4 Ratemaking Remedies), a result that is not certain absent settlement and, without which, the Utility could  
5 face potentially an even larger penalty. Further, both the Financial Remedies and Non-Financial  
6 Remedies are tailored to the circumstances and formulated to benefit the Utility's customers and those  
7 harmed by the actions at issue. In light of the above, the Debtors assert that the Phase II Settlement  
8 Agreement is fair and reasonable and should be approved.

9 **VI. NOTICE**

10 Notice of this Motion will be provided to (i) the Office of the United States Trustee for  
11 Region 17 (Attn: Andrew Vara, Esq. and Timothy Laffredi, Esq.); (ii) counsel to the Creditors  
12 Committee; (iii) counsel to the Tort Claimants Committee; (iv) the Securities and Exchange  
13 Commission; (v) the Internal Revenue Service; (vi) the Office of the California Attorney General;  
14 (vii) the California Public Utilities Commission; (viii) the Safety and Enforcement Division; (ix) the  
15 City of San Bruno; (x) the City of San Carlos; (xi) the Public Advocates Office; (xii) The Utility Reform  
16 Network; (xiii) the Nuclear Regulatory Commission; (xiv) the Federal Energy Regulatory Commission;  
17 (xv) the Office of the United States Attorney for the Northern District of California; (xvi) counsel for  
18 the agent under the Debtors' debtor in possession financing facility; and (xvii) those persons who have  
19 formally appeared in these Chapter 11 Cases and requested service pursuant to Bankruptcy Rule 2002.  
20 The Debtors respectfully submit that no further notice is required.

21 No previous request for the relief sought herein has been made by the Debtors to this or  
22 any other court.  
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1               WHEREFORE the Debtors respectfully request entry of an order granting (i) the relief  
2 requested herein as a sound exercise of the Utility's business judgment, appropriate under section 105(a)  
3 of the Bankruptcy Code and Bankruptcy Rule 9019, and in the best interests of the Utility's estate, its  
4 creditors, shareholders, and all other parties in interest, and (ii) such other and further relief as the Court  
5 may deem just and appropriate.  
6

7 Dated: April 8, 2020

**WEIL, GOTSHAL & MANGES LLP**

**KELLER BENVENUTTI KIM LLP**

10 By: /s/ Jessica Liou  
11 Jessica Liou

12 *Attorneys for Debtors*  
13 *and Debtors in Possession*  
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